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July 18, 2014

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JUL 18 2014

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

ATT: Lisa Hone, Telecommunications Access Policy Division
Wireline Competition Bureau

Re: **Requests for Review of Decisions of the Universal Service Administrator by
Biblioteca Abelardo Díaz Alfaro, CC Docket No. 02-6**

Dear Ms. Dortch:

On behalf of Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan, enclosed please find three copies of a Request for Review of adverse decisions by the Universal Service Administrative Company with respect to the Funding Request Numbers for Funding Year 2013 referenced in the enclosed filing.

The instant Request for Review was filed with the Commission via ECFS on July 15, 2014. However, ECFS did not permit the Municipality to upload Exhibits C, D and E to the Request for Review, as the electronic system generated the following error message: "Unable to read PDF file." On July 16, 2014, the undersigned counsel sent copies of the Request for Review and all Exhibits to staff in the Telecommunications Access Policy Division. However, out of abundance of caution, the Municipality hereby submits hard copy of the Request for Review and all of its Exhibits.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Lizabel M. Negrón-Vargas

Lizabel M. Negrón-Vargas, Esq.
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Name	Subject	
02-6	In the Matter of Schools and Libraries Universal Service Support Mechanism	
Contact Info		
Name of Filer: Biblioteca Abelardo Diaz Alfaro of the Municipality of San Juan		
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Exhibit A - COMADs.pdf	Exhibit A	554 KB
Exhibit B - Matrix.pdf	Exhibit B	962 KB
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	Biblioteca Abelardo Díaz Alfaro
	)	Billed Entity Number 16052522
Requests for Review of	)	Funding Year 2013
Decisions of the	)	Form 471 Application Nos. 920752
Universal Service Administrator by)	
	)	Funding Requests Nos. 2512514,
Biblioteca Abelardo Díaz Alfaro	)	2512551, 2512567, 2512578, 2512583,
	)	2512609, 2512615, 2512625, 2512631
	)	2512636, 2512651, 2512672, 2512680
	)	2512698, 2512710, 2512734, 2512759
	)	2512791, 2512804, 2515317
)	
)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism)	

ATT: Telecommunications Access Policy Division
Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan (hereinafter, the "Municipality") in the Commonwealth of Puerto Rico, pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ hereby petitions the Commission's Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company ("USAC") with respect to the above-referenced Funding Request Numbers ("FRNs") for Funding Year 2013 filed by the Municipality. In the alternative, the Municipality seeks a waiver of the Commission's rules.

¹ 47 C.F.R. §§ 54.719(c), 54.722(a).

I. BACKGROUND

The “bibliotecas” – which is Spanish for “libraries” – that applied for E-Rate funding through the above-referenced FRNs are instrumentalities of the Municipality of San Juan in the Commonwealth of Puerto Rico. Puerto Rico is divided into 78 “municipalities.” Each municipality has a mayor and a legislature. San Juan is Puerto Rico’s capital and most populous municipality.

The economy in Puerto Rico has been in a very serious recession for nearly eight years, driving tax revenues down and pushing the unemployment rate up to nearly 15 percent.² Almost 47 percent of residents in Puerto Rico live below the poverty line (by comparison, the poverty rate in Mississippi, the poorest state in the United States, is 23 percent). Unfortunately, a disproportionate number of those living below the poverty line are children. According to a 2013 study conducted by the Annie E. Casey Foundation and the National Council of La Raza using data from the U.S. Census American Community Survey, more than 80 percent of children in Puerto Rico live in high-poverty areas (in contrast to 11 percent of children across the United States) and 56 percent of Puerto Rican children live in poverty (compared with 22 percent for the entire United States).³ San Juan, being Puerto Rico’s largest city, is home to a disproportionately large number of these impoverished children. The economic situation in Puerto Rico is so precarious that the Obama Administration recently named a team of Administration experts to

² Michael A. Fletcher, *Puerto Rico, With At Least \$70 Billion In Debt, Confronts a Rising Economic Misery*, The Wash. Post, November 30, 2013, available at: http://www.washingtonpost.com/business/economy/puerto-rico-with-at-least-70-billion-in-debt-confronts-a-rising-economic-misery/2013/11/30/f40a22c6-5376-11e3-9fe0-fd2ca728e67c_story.html (last visited June 20, 2014).

³ Dania Alexandrino, *Study: Puerto Rico's children mired in poverty that dwarfs rest of U.S.*, CNN, August 1, 2013, available at: <http://www.cnn.com/2013/08/01/us/puerto-rico-child-poverty> (last visited June 20, 2014).

work with Puerto Rico “to marshal existing federal resources” and assist Puerto Rico in “maximizing the impact of existing federal funds flowing to the Island.”⁴ If USAC’s decisions are left to stand, the results would be devastating to the Municipality and its library patrons. Specifically, the Municipality would be liable for \$290,736.00, which it currently does not have at its disposal. In addition, given the precarious state of Puerto Rico’s economy, it not surprising that thousands of the Municipality’s residents – including the unemployed, the elderly, students, and the economically disadvantaged – rely on public libraries for Internet access. Absent Commission grant of the instant Request for the Review or Waiver, the Municipality would have to cease providing Internet access service to its library patrons. E-Rate funding is critical to Puerto Rico’s economy and to the Municipality’s public library patrons.

On January 9, 2013, the Municipality filed Form 470 Application Number 165030001094033 for Funding Year 2013.⁵ In response to its Form 470, the Municipality considered the bids for Internet access from the following two entities: Educational Services Network (“EdNet”) and A New Vision in Educational Services & Materials (“Nevesem”), through a Selection Committee established by the Municipality to evaluate these bids. A third entity, TelNet, was disqualified because its bid included an offer to make a cash payment of \$26,160.00 (which amounts to 10 percent of the cost of the E-rate eligible goods and services quoted by TelNet) to the Municipality, which constitutes a violation of the Commission’s rules and regulations. *See* 47 C.F.R. § 54.523.

⁴ *Supporting Puerto Rico’s Economic Development Progress*, The White House, President Obama and the Hispanic Community, Nov. 21, 2013, available at: <http://www.whitehouse.gov/blog/2013/11/21/supporting-puerto-rico-s-economic-development-progress> (last visited June 20, 2014).

⁵ Biblioteca Abelardo Díaz Alfaro, FCC Form 470 Application Number 165030001094033, filed February 06, 2013.

The Committee was composed of Mr. Miguel A. Cruz Matos, Director of the Municipality's Planning and Budget Division, and Mrs. Loyda López Rosario, Director of the Municipality's Educational Services Program and Information Systems Specialist. After the Committee carefully considered the two eligible bids, and after the required 28 days from the date the FCC Form 470 was posted on USAC's website, the Committee recommended and the Municipality selected Nevesem as the most cost-effective bid, with price being the primary factor considered.

On May 19, 2014, and as a result of a Selective Review, USAC issued a Notification of Commitment Adjustment Letters ("COMAD Notifications"). The COMAD Notification referencing FCC Form 471 No. 920752 rescinds funding commitments for 20 FRNs stating as follows:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provide by the applicant, to the Selective Review team. The factors that were assigned to cost-pricing totaled 10 points, not 30 points as indicated on your evaluation matrix provided. *Evidencia de certificación en USAC, Evidencia de poder brindar el servicio, Ancho de Banda and Evaluación de los centros real que proporciona exactitud en la cotización del servicio are not pricing factors.* FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full.⁶

⁶ Notification of Commitment Adjustment Letter from Schools and Libraries Division, Universal Services Administrative Company, to Sara I. Benitez-Delgado, Biblioteca Abelardo Díaz Alfaro, Funding Year 2013, Form 471 Application Number 920752, dated May 19, 2014 ("COMAD Notification re Form 471 No. 920752") (Exhibit A).

For the reasons stated below, the Municipality hereby appeals the COMAD Notifications impacting the above-captions FRNs associated with FCC Form 471 Application Number 920752. The Municipality requests that the denial and rescissions of the FRNs at issue be reversed and that the underlying applications be remanded to USAC for further processing. In addition, but also as and an alternative, the Municipality requests a waiver of the Commission's rules.

II. THE MUNICIPALITY CAREFULLY CONSIDERED ALL BIDS AND SELECTED THE MOST COST-EFFECTIVE BID, WITH PRICE BEING THE PRIMARY FACTOR.

USAC incorrectly denied and/or rescinded the FRNs at issue in this Request for Review because the Municipality considered all eligible bids and selected the most cost-effective bid among them with price being the primary factor. The service provider selected by the Municipality (Nevesem) – not TelNet – provided the most complete bid, as well as the lowest bid among eligible providers. TelNet was disqualified for offering the Municipality, in the cost proposal itself, a refund of 10 percent in its bid, which the Municipality concluded is barred by FCC rules and regulations. For this reason alone, the Commission must grant this appeal and instruct USAC to continue to process the FRNs at issue.

(a) **Price Was The Primary Factor.** The Commission's rules provide that, "[i]n determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered."⁷ The Commission has stressed that, under its rules, applicants are not

⁷ 47 C.F.R. § 54.511(a); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 481 (1997) ("Applicants may also consider relevant factors other than the pre-

required to select the lowest-priced service provider, but must assign the greatest weight to price when evaluating competing bids.⁸ Consistent with these requirements, the Municipality created a bid evaluation matrix designed to evaluate the following factors:⁹

Evaluation Criteria	Points Assigned
Cost-effectiveness	30
Experience	25
Personnel qualifications	20
Managerial and technical qualifications	10
Availability	5
Value-added	5
Local vendor	5
Total Points	100

The record is clear that the Municipality assigned the most points to the cost-effectiveness factor. Therefore, USAC incorrectly concluded that price was not the primary factor in considering all eligible (and complete) bids.

(b) The Municipality Selected The Vendor That Provided the Most Cost-Effective and Fairest Bid: Which Was Nevesem. The record shows that EdNet's cost proposal to provide service to the Municipality's libraries was for the sum of \$511,984.00. See Exhibit C.

discount prices submitted by providers, such as prior experience, personnel qualifications, management capability, and environmental objectives") (subsequent history omitted).

⁸ Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., CC Docket No. 02-6, DA 13-1891, *Order*, 9 n.46 (TADP 2013) (citing 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a) (2013), and Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, CC Docket Nos. 96-45, 97-21, *Order*, 18 FCC Rcd 26407, 26429, ¶ 50 (2003)); Request for Review of a Decision of the Universal Service Administrator by Henrico County School District, CC Docket No. 02-6, DA 13-999, *Order*, 4 n.16 (TAPD 2013) (citations omitted); Request for Review of a Decision of the Universal Service Administrator by Fall River Public School District, CC Docket No. 02-6, DA 13-1159, *Order*, 5 n.21 (TAPD 2013) (citations omitted).

⁹ See Municipality's Evaluation and Selection Criteria, and Bid Evaluation Matrix for FY2013 (Exhibit B).

Nevesem's cost proposal to provide service to the Municipality's libraries was, in contrast, for \$290,736.00. See Exhibit D. TelNet's cost proposal was disqualified.

Nevertheless, even when TelNet's cost proposal to provide service to the Municipality's libraries was for \$261,600.00, said proposal specifically included an offer to "make a reimbursement of \$26,160.00 to the Municipality of San Juan," an amount that is ten (10) percent of TelNet's cost proposal, and which the Municipality perceived as an attempt to improperly influence the outcome of the E-rate competitive bidding process, in violation of the FCC's express rules.¹⁰ The Municipality is aware of the Commission's and USAC's ongoing commitment to strong stewardship of the Universal Service Fund and to combatting waste, fraud and abuse in the E-rate program and acted accordingly. The Municipality should not be punished for following the rules designed to protect against waste, fraud and abuse. After properly disqualifying TelNet, the Municipality chose the lowest bid, among the only two eligible bidders, EdNet and Nevesem; which was Nevesem.

(c) The Municipality Properly Considered Various Elements Within the Price Category.

The COMAD Notification re Form 471 No. 920752 states the following:

Evidencia de certificacion en USAC, Evidencia de poder brindar el servicio, Ancho de Banda and Evaluacion de los centros real que proporciona exactitud en la cotizacion del servicio are not pricing factors.

"*Evidencia de certificacion en USAC*," in English, means evidence that the vendor is certified by USAC to provide E-rate services. "*Evidencia de poder brindar el servicio*" means evidence that

¹⁰ TelNet's actual cost proposal is attached as Exhibit E. Page 21 in Exhibit E provides a breakdown of the reimbursement of 10 percent offered by "TelNet Childrens Fund" services (TelNet). This offer is clearly prohibited by FCC rule 47 C.F.R. § 54.523.

the vendor is able to provide the service. "*Ancho de Banda*" means bandwidth, that is, whether the vendor is able to offer the bandwidth requested by the Municipality in a cost-effective manner. "*Evaluacion de los centros real que proporciona exactitude en la cotizacion del servicio*" means that the vendor conducted a physical evaluation of the locations to be served to support the accuracy of its bid. As explained below, these sub-factors are elements that applicants can and should consider when evaluating the cost-effectiveness of a bid.

Eligibility to Participate in the Program. Eligibility to participate in the E-Rate program is an essential element of cost-effectiveness. The Commission has stated that service providers must be eligible to participate in the E-Rate program. At the same time, the Commission's rules require that price be the primary factor when considering bids, meaning that price must be given more weight than any other factor. Combining these requirements an applicant cannot award a contract to an ineligible vendor merely because the vendor submitted the most cost-effective bid, nor can it award a contract to a vendor that submits the most cost-effective bid merely because the vendor is an eligible service provider. A cost proposal from a vendor that is not eligible to provide E-Rate services is not, by definition, cost-effective because the applicant will not be able to obtain funding commitments from USAC. Therefore, the Municipality reasonably and appropriately considered the vendors' eligibility as part of the cost-effectiveness of their bids.

Ability to Provide Service. The ability of a vendor to provide service is an important and appropriate component of the cost-effectiveness factor. It was the Municipality's duty to evaluate whether the vendors that submitted bids could actually deliver the services for which they bid. If a vendor is unable to deliver the services for which it bid, then its cost proposal is not cost-effective, even if it's the lowest cost proposal. The Municipality was merely exercising

due diligence when it considered, as part of the cost-effectiveness factor, whether the vendors could deliver the services.

Bandwidth. Whether a vendor is able to deliver the requested bandwidth to an applicant's locations is one of the most fundamental aspects of price. A low cost-proposal for bandwidth that is insufficient to meet the capacity needs of the Municipality's libraries is not cost effective. Conversely, a high price for excessive bandwidth that is not needed by the Municipality would constitute a waste of limited E-rate dollars. The cost-effectiveness of the quoted price must be considered in light of the Municipality's bandwidth needs, which is why the Municipality reasonably concluded whether the vendors' cost proposals were responsive to the bandwidth needs.

Site Visits. A site visit is an important factor when determining the cost-effectiveness of a bid because it allows the bidder to gain an understanding of: (a) the applicant's actual operational environment; (b) the actual facilities and technologies in use; (c) the specific locations where the equipment is to be located; (d) the challenges to deploying equipment and services to particular locations; and (e) the applicant's overall development and service priorities in light of its technology needs. This information allows a bidder to provide a more accurate bid relating to the cost of the E-Rate services and products because not all locations pose the same challenges. For instance, providing service to an applicant that is located in a single building has a different cost than providing the same service to an applicant that is located in several different buildings spread out over long distances. Similarly, providing service to an applicant that is located in a rural area will likely have a different cost than providing the same service to an applicant that is located in an urban area. In the Municipality's experience, reputable E-Rate

vendors will conduct site visits to evaluate the true cost of providing service taking into account the particular circumstances of deploying service to a particular applicant.

In this case, all bidders had the opportunity to conduct a site visit. A proposal from a vendor that not only did not conduct a site visit for the funding year in question but also has not provided E-rate services to Municipality raises questions in the minds of those evaluating the bids regarding the accuracy of the cost proposal and the vendor's ability to perform the work within the required timeframe for the quoted price. Therefore, it was reasonable and appropriate for the Municipality to consider whether the vendors had conducted an evaluation of the locations as part of the cost-effectiveness factor.

III. WAIVER REQUEST

The Municipality has presented clear evidence that USAC's decision to deny and rescind \$290,736.00 in E-Rate funds for 2013 was in error. Not only did the Municipality consider all *eligible* bids, but it also selected the most cost-effective bid (lowest) with price being the primary factor, from the eligible bidders. However, if the Commission finds that the Municipality's evaluation procedures fall short of the requirements in Sections 54.504 and 54.511, as well as any other relevant section of the Commission's rules, the Municipality hereby requests a waiver of the Commission's rules.

Specifically, the waiver is proper because the Municipality selected the vendor that provided the most cost-effective and fair Bid, which was Nevesem. As previously stated, the record shows that EdNet's cost proposal to provide service to the Municipality's libraries was \$511,984.00. (Exhibit C); and Nevesem's cost proposal to provide service to the Municipality's

libraries was for \$290,736.00 (Exhibit D). TelNet's, who was disqualified, cost proposal to provide service to the Municipality's libraries was \$261,600.00. (Exhibit E).

However, as previously stated, TelNet's proposal specifically included an offer to "make a reimbursement of \$26,160.00 to the Municipality of San Juan," an amount that is ten (10) percent of TelNet's cost proposal, and which the Municipality perceived as an attempt to improperly influence the outcome of the E-rate competitive bidding process **in violation of the FCC's express rules**. The Municipality is perplexed as to how, given the Commission's and USAC's ongoing commitment to strong stewardship of the Universal Service Fund and to combatting waste, fraud and abuse in the E-rate program, it has been punished for following the rules designed to protect against waste, fraud and abuse.

The 10 percent refund would have been paid by "TelNet Children's Fund" did not render the offer a permissible charitable donation. The Wireline Competition Bureau has addressed the treatment of charitable donations, explaining that even if a charitable donation furthers educational programs and purposes; it will violate the E-rate program gift rule if it is provided for the purpose of influencing the E-rate competitive bidding process. See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324, 17328 ¶ 11 (Wireline Comp. Bur. 2010) (2010 Clarification Order).

This principle was unchanged by the Bureau's May 23, 2014, Order providing new guidance with respect to the requirement that applicants deduct from their E-rate funding requests the value of ineligible services bundled with services eligible for E-rate support. As the Commission stated in the May 23, 2014, Order, "If a gift was prohibited prior to today's Order, it

remains prohibited by our rules.” *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, DA 14-712, ¶ 6 (Wireline Comp. Bur. 2014).

A cash offer that is included in a vendor’s proposal in response to a Form 470, which would have essentially covered the Municipality 10 percent portion, without even an explanation of how such a payment would further educational programs and purposes, could not be taken as anything other than an attempt to improperly influence the competitive bidding process. This practice is barred by the Commission’s rules. Specifically, section 54.523 of the Commission’s rules states that “An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts” and that “[a]n eligible school, library, or consortium *may not* receive rebates for services or products purchased with universal service discounts.”¹¹

Therefore, the Municipality acted properly when it disqualified TelNet and, as between the two remaining eligible bidders, Nevesem provided the lowest-priced bid among the two remaining eligible bidders. For these reasons, the Commission must reverse USAC’s determinations and instruct it to continue to process the FRNs at issue.

However, the Commission’s rules may be waived if good cause is shown.¹² In fact, the Commission has extended this waiver authority to waivers of E-Rate Program rules.¹³ This

¹¹ 47 C.F.R. § 54.523 (emphasis added).

¹² 47 C.F.R. § 1.3.

¹³ See, e.g., *Request for Review of Decision by the Universal Service Administrator by Bishop Perry Middle School*, Order, 21 FCC Rcd 5316, ¶ 4 (2006).

occurs where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver of the Commission's rules is appropriate if both: (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹⁶ The Commission looks favorably on waivers where there is no evidence of fraud or misuse of the funds.¹⁷

In this case, there is good cause to grant a waiver of the rules, if necessary. The Municipality was and continues to be in compliance with all core programs' requirements. Specifically, it submitted the required forms within the requisite deadlines; it waited the mandatory 28 day term before selecting a service provider; it conducted a fair and open competitive bidding process in which all vendors had access to the same information; it complied with relevant local procurement laws; and it evaluated each of the bids received in a manner consistent with USAC's guidelines; assigning the most points to the cost-effectiveness factor.

The Municipality acted in a manner consistent with the Commission's rule prohibiting waste, fraud and abuse when it disqualified TelNet's proposal because the proposal itself specifically included a cash payment offer of 10 percent. The Municipality understood this unsolicited offer to be, at worst, an attempt to improperly influence the bidding selection process in violation of the FCC's rules or, at best, an attempt to provide the Municipality with a "gift,"

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *Request for Waiver of the Decision of the Universal Services Administrator by Barberton City School, Schools and Libraries Universal Service Support Mechanism*, Order, 23 FCC Rcd 15526, ¶ 7 (TAPD 2008).

which is also prohibited by the FCC's rules. As recent as June 20, 2014, the Commission has reiterated its "*zero tolerance for fraud or abuse*" in the E-rate program.¹⁸ If, after reviewing the record in this matter, the Commission concludes that TelNet's offer to make a cash payment of 10 percent to the Municipality did not constitute a prohibited action, a waiver should be granted because the Municipality acted in good faith and in an attempt to prevent waste, fraud and abuse.

Furthermore, the Municipality's decision to consider specific factors within the price category that have a direct impact on price and the cost-effectiveness of a bid was intended to ensure that the cost proposals were responsive to the Municipality's technical needs as well as reliable.

The bottom line is that the Municipality selected the most cost-effective service offering among the eligible bidders – that of Nevesem. This is not an instance in which the Municipality is trying to "re-engineer its competitive bidding process after the conclusion of that process to reach its desired result," as the Commission has found in other cases.¹⁹ In addition, USAC has not presented any evidence of waste, fraud and abuse by the Municipality. On the contrary, the Municipality took steps to avoid waste, fraud and abuse when it disqualified what it perceived to have been a proposal in violation of the Commission's rules. Thus, a waiver of the Commission's rules would be in the public interest.

A waiver is also requested based on the undue hardship that would befall the Municipality absent a waiver. Absent Commission grant of the Request for the Review or grant

¹⁸ See FCC Chairman Wheeler Proposes Landmark E-Rate Modernization To Bring High-Speed Wi-Fi To Every Student and Library, available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0620/DOC-327777A1.pdf (last visited June 20, 2014).

¹⁹ See, e.g., *Petition for Reconsideration by Henrico County School District*, CC Docket No. 02-6, DA 13-1884, Order on Reconsideration, 28 FCC Rcd 13015 (TAPD 2013).

of this request for waiver, the Municipality would be liable for \$290,736.00, which would be devastating to the Municipality and its library patrons. To be blunt, as noted above, the Municipality does not have access to \$290,736.00. Furthermore, the Municipality has explained the current economic situation in Puerto Rico, which is so severe that the White House assembled a team of Administration experts to work with Puerto Rico to maximize "the impact of existing federal funds flowing to the Island." On the other hand, a waiver would have minimal impact on the universal service fund, as the funds were already approved in the FCDL and held in reserve. Therefore, to the extent that it is necessary, the Municipality respectfully requests a waiver of sections 54.504 and 54.511 as well as any other relevant sections of the Commission's rules.

IV. CONCLUSION

For the reasons set forth above, the Municipality respectfully requests grant of the instant Petition for Review and Waiver with respect to its E-Rate applications for Funding Year 2013.

Respectfully submitted,

BIBLIOTECA ALBELARDO DIAZ ALFARO

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DATE: July 15, 2014
Via the FCC's Electronic Comment
Filing System (ECFS)

Declaration of Loyda López Rosario

I, Loyda López Rosario, hereby declare under penalty of perjury that:

1. I am the Director of the Municipality of San Juan's Educational Services Program and Information Systems Specialist. My business address is: Centro de Gobierno, Piso 12, Municipio Autónomo de San Juan. P.O. Box 70179, San Juan, PR 00936-8179.
2. I was a member of the Municipality's selection committee responsible for evaluating the bids received for Funding Year 2013 under the E-Rate program administered by the Universal Service Administrative Company.
3. I have read the accompanying *Request for Review and Waiver* by Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan. The statements made in the *Request for Review and Waiver* are true and correct to the best of my knowledge and belief.



Loyda López Rosario

Executed: June 25, 2014

Declaration of Miguel A. Cruz Matos

I, Miguel A. Cruz Matos, hereby declare under penalty of perjury that:

1. I am the Director of the Municipality of San Juan's Community Development Department's Planning Division. My business address is: Centro de Gobierno, Piso 12, Municipio Autónomo de San Juan, P.O. Box 70179, San Juan, PR 00936-8179.
2. I was a member of the Municipality's selection committee responsible for evaluating the bids received for Funding Year 2013 under the E-Rate program administered by the Universal Service Administrative Company.
3. I have read the accompanying *Request for Review and Waiver* by Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan. The statements made in the *Request for Review and Waiver* are true and correct to the best of my knowledge and belief.


Miguel A. Cruz Matos

Executed: June 25, 2014

Exhibit A

Notification of Commitment Adjustment Letter from Schools and Libraries
Division, Universal Services Administrative Company, to Sara I. Benitez-Delgado,
Biblioteca Abelardo Díaz Alfaro, Funding Year 2013,
Form 471 Application Number 920752, dated May 19, 2014



Notification of Commitment Adjustment Letter

Funding Year 2013: July 1, 2013 - June 30, 2014

May 19, 2014

SARA I. BENITEZ-DELGADO
BIBLIOTECA ABELARDO DIAZ ALFARO
71179 - FLOOR 12
SAN JUAN, PR 00936 8179

Re: Form 471 Application Number:	920752
Funding Year:	2013
Applicant's Form Identifier:	IA-16052522-13
Billed Entity Number:	16052522
FCC Registration Number:	0019729235
SPIN:	143022659
Service Provider Name:	A New Vision in Educational Services &
Service Provider Contact Person:	Ricardo Dreyfous

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Ricardo Dreyfous
A New Vision in Educational Services & Materials (NEVESEM)

Funding Commitment Adjustment Report for
Form 471 Application Number: 920752

Funding Request Number:	2512567
Services Ordered:	INTERNET ACCESS
SPIN:	143022659
Service Provider Name:	A New Vision in Educational Services &
Contract Number:	031605262-13
Billing Account Number:	03-1605262
Site Identifier:	16052522
Original Funding Commitment:	\$12,852.00
Commitment Adjustment Amount:	\$12,852.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, to the Selective Review team. The factors that were assigned to cost/pricing totaled 10 points, not 30 points as indicated on your evaluation matrix provided. Evidencia de certification en USAC, Evidencia de poder brindar el servicio, Ancho de Banda and Evaluacion de los centros real que proporciona exactitud en la cotizacion del servicio are not pricing factors. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full.

Funding Request Number:	2512514
Services Ordered:	INTERNET ACCESS
SPIN:	143022659
Service Provider Name:	A New Vision in Educational Services &
Contract Number:	031605222-13
Billing Account Number:	03-1605222
Site Identifier:	16052522
Original Funding Commitment:	\$29,700.00
Commitment Adjustment Amount:	\$29,700.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, to the Selective Review team. The factors that were assigned to cost/pricing totaled 10 points, not 30 points as indicated on your evaluation matrix provided. Evidencia de certification en USAC, Evidencia de poder brindar el servicio, Ancho de Banda and Evaluacion de los centros real que proporciona exactitud en la cotizacion del servicio are not pricing factors. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full.